

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2896 of 2007

(Suresh s/o Shripatrao Charthal v. State of Maharashtra, through its Secretary, and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Shri C.V. Kale, Advocate for Petitioner.
AGP for R- 1.
Shri D.M. Kakani, Advocate for R- 2 and 3.
Shri S.P. Palshikar, Advocate for R- 4.

Coram : A.H. Joshi & R.C. Chavan, JJ.
Dated : 9th August, 2007

1. The petitioner has challenged the order dated 2-7-2006 (Annexure-A to the petition) transferring him from his present posting and sending him on deputation to Zilla Parishad, Gondia Rural Water Supply Division. The petitioner has raised the following grounds of challenge :

- (a) The petitioner is working on his present posting for less than three years.
- (b) The list of employees, who are due for transfer, is not prepared.
- (c) The approval of Minister-in-charge is not taken.

- (d) The petitioner's son is studying in 10th Standard at Nagpur.
- (e) The transfer of the petitioner, which, according to respondents No.1 to 3, is done in public interest, has been ordered so as to favour respondent No.4.
- (f) Being junior to the petitioner, respondent No.4 ought to have been posted in place of the petitioner.

2. As a foundation for this claim, the petitioner has relied upon the provisions of Act No.21 of 2005. According to the petitioner, the mandatory provisions contained in Sections 3 and 4 of the said Act have been violated.

3. The petition has been opposed by filing affidavit by the respondents. It has been urged that in exceptional circumstances, the procedure laid down in Section 3 of the said Act shall be dispensed with. It is contended that in view of the complaints against the petitioner, he has been transferred in public interest. Though the order of transfer of the petitioner is signed by the Chief Administrative Officer, it is issued after taking approval from the Government. It is also contended that the transfer of the petitioner has been effected after the approval of the Minister-in-charge and the Secretary of the concerned Department. According to the respondents, the provisions of the Act were made applicable by a Notification dated 12-6-2007.

4. The learned Advocate for the petitioner placed reliance on the judgments in Ramadhar Pandey v. State of U.P. and others (Vol.9 Supreme Court Service Rulings 317), Dr. Ramesh Chandra Tyagi v.

Union of India and others (Vol.21 Supreme Court Service Rulings 597), and Director of School Education, Madras and others v. O. Karuppa Thevan and another (Vol.22 Supreme Court Service Rulings 33), to urge that the order of transfer ought to have been deferred till the next academic year, as the petitioner's son is studying in 10th Standard and the academic year has already commenced, that since the approval of the competent authority was not taken, the transfer is vitiated, and lastly that since the transfer was effected in order to accommodate somebody with mala fide intention, the same is liable to be struck off.

5. We find that Act No.21 of 2005 carves out the powers in the competent authority and only condition required to be complied with is about recording of reasons, as can be seen from sub-clause (2) of sub-section (4) of Section 4 of the Act. In the affidavit-in-reply of respondents No.2 and 3, a statement is contained stating that the Minister-in-charge is consulted so also the Secretary of the concerned Department has approved the transfer of the petitioner. This statement by the respondents has not been disputed by the petitioner by filing affidavit-in-rejoinder or otherwise.

6. Parties have agreed on the position that respondents No.2 and 3 are not the Government authorities but are officers of local authority. In view of this, the Minister is not directly involved. Yet, on facts, the Minister's approval is stated to have been taken and this averment in reply has gone uncontroverted.

7. Insofar as the ground of accommodation of respondent No.4 is concerned, had the petitioner demonstrated on facts that the transfer was effected sheerly in order to accommodate respondent No.

4, the situation would have been different. But when the respondents have come with a case that they have transferred the petitioner by taking recourse to the residuary clause contained in sub-section (4) of Section 4 of the said Act, accommodation of respondent No.4 is a fallout and not the object. The petitioner is, therefore, not entitled to take up this as a primary ground.

8. In the circumstances, this Court finds that the transfer of the petitioner cannot be said to be effected without any authority, or ordered illegally or mala fide. Therefore, we see no reason to interfere with the impugned order. The petition is dismissed.

JUDGE.

JUDGE.

Pdl.